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ABSTRACT

This technical assistance paper is intended to provide updated guidance for Florida educators of students with disabilities concerning changes in identification, free appropriate public education (FAPE), placement, or dismissal from special education. Following an introductory section presenting the background, purpose, and relevant terms, the paper is in a question-and-answer format. Questions address topics such as: requirements before changing a student's disability category; when prereferral activities are and are not required; what constitutes a change in FAPE or placement; graduation as a change in FAPE; the individualized education program and graduation; required procedures for adding a related service if a student is currently receiving special education services; procedures for discontinuing a related service for such a student; requirements for determining that a student no longer needs special education services; formal evaluation requirements prior to dismissing a student from special education; determination of dismissal criteria; standards for dismissal from special education; readmission into the special education program; and continued provision of accommodations to a student dismissed from special education. (DB)

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TECHNICAL ASSISTANCE PAPER
ESE 10971

CHANGE IN IDENTIFICATION, FAPE, PLACEMENT, OR DISMISSAL FROM SPECIAL EDUCATION

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Change in Identification, FAPE, Placement, or Dismissal from Special Education

BACKGROUND

Before determining that the student no longer has a disability, an evaluation must be conducted. Such an evaluation, like any other reevaluation, is subject to requirements of 34 CFR 300.533. The Individual Educational Plan (IEP) team initiates a reevaluation by reviewing existing data on the student, including evaluations and information provided by the student's parents, current classroom-based assessments, and observations by teachers and related services providers. The IEP team may conduct this review without a meeting. However, if this occurs, there must be documentation to verify that all required personnel conducted the review. Based on the review described above, the IEP team makes a decision regarding the need for additional data. If it is determined that additional data are needed, parental consent must be obtained and appropriate tests and other evaluation instruments must be administered. If the IEP team, which includes the parent, decides that no additional data are needed to determine whether the student continues to be a student with a disability in need of special education services, then formal testing would not be necessary. Upon completion of the evaluation, an IEP meeting is conducted to discuss the results. Refer to *Reevaluation Procedures for Students with Disabilities*, Technical Assistance Paper (TAP) number FY 2000-2 for additional information on the reevaluation process.

PURPOSE

This technical assistance paper will replace the following TAPs: (1) *Criteria and Procedures for the Dismissal of Students from Exceptional Student Education Programs—Revised*, number FY 1994-11 and (2) *Speech-Language Impaired Dismissal Criteria*, number FY 1998-9.

CHANGE IN IDENTIFICATION, PLACEMENT, OR FAPE

In the past, when a student's program eligibility changed, a staffing committee or IEP meeting was often held and a student was dismissed from a program before changing eligibility to a different program. Based on interpretation of the federal regulations (IDEA, 1997), dismissal occurs only when it is determined that a student no longer has a disability and is no longer in need of special education. Other actions are now defined as a change in identification, placement, or free appropriate public education (FAPE). Section 34 CFR 300.503(1)(b) states that "Written notice...must be given to the parents of a child with a disability a reasonable time before the public agency (i) proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or (ii) refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child." Therefore, a student is only "dismissed" when all special education and related services cease; not when a change in identification, placement, or FAPE occurs.

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Division of Public Schools
and Community Education
Bureau of Instructional Support
and Community Services

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FLORIDA DEPARTMENT OF EDUCATION

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QUESTIONS AND ANSWERS

Change in Identification

1. What is required before changing the disability category for a student receiving special education services?

Prior to adding, changing, or removing a disability category for a student receiving special education services, the reevaluation process must be followed as described on page one. This includes providing prior written notice to the parent of the IEP meeting to discuss a change in identification. In order for a disability category to be added, the student must meet the initial eligibility requirements for that exceptionality. Upon completion of the reevaluation process and eligibility determination, the IEP team must revise the student's IEP, as appropriate. The school district does not need to obtain new consent for placement. However, the school district is required to provide prior written notice of change in identification to the student's parents.

2. Are prereferral activities required before changing a disability category for a student receiving special education services?

No, unless the student is being considered for eligibility for specific learning disabilities or emotionally handicapped programs. However, please note that existing information can be used for prereferral activities. See specific program rules for more detailed information.

Prereferral data are not required for pre-kindergarten children or students eligible for mentally handicapped (unless the student has been enrolled in basic education programs for more than six weeks), speech and language impaired, deaf/hard of hearing, visually impaired, physically impaired, dual-sensory impaired, autistic, or hospital/homebound programs.

Change in FAPE or Placement

3. What constitutes a change in FAPE or placement?

FAPE is considered changed when services provided to a student significantly change. Simply changing IEP goals and objectives or benchmarks is not considered a change in FAPE. However, a change in supplementary aides or services such as the addition or deletion of a related service, a change in counseling services from three times a week to once a month, or the provision of an aide for the student are examples of a change in FAPE.

These changes may or may not result in a change in the time the student spends with nondisabled peers (change in placement). A student's placement is considered changed when the IEP team significantly changes the amount of time the student will be separated from his/her non-disabled peers for the purpose of providing special education services as stated below. An example is a change from a regular classroom to a resource room. Parents must participate in the decision making through the IEP process and receive prior written notice of a change in placement before this change occurs.

The amount of time is "significantly" changed when a student's educational placement falls within a different category as defined in the U.S. Department of Education, Office of Special Education Programs' Annual Data Report. The categories of educational placement of children with disabilities, ages 6-21, are as follows:

special education and related services outside regular class less than 21 percent of day (e.g., regular class with inclusion or pull-out services)

special education and related services outside regular class at least 21 percent of day and no more than 60 percent of the school day (e.g., resource room)

special education and related services outside regular class more than 60 percent of the day (e.g., self-contained special classes)

special education and related services for greater than 50 percent of the school day in public separate facilities (e.g., public day school)

special education and related services, at public expense, for greater than 50 percent of the school day in private separate facilities (e.g., private day schools)

special education and related services for greater than 50 percent of the school day in public residential facilities (e.g., public residential schools)

special education and related services, at public expense, for greater than 50 percent of the school day in private residential facilities (e.g., private residential schools)

special education and related services in hospital programs or homebound programs

Except for a public separate day school, juvenile justice facility, or residential placement, a change of placement does not typically equate to the physical location where the student receives special education services. Placement has not changed when a student's identification changes and the total amount of time defined by the placement category remains the same.

4. Is graduation with a standard high school diploma or a State of Florida high school diploma a change in FAPE?

Yes. The federal regulations, 34 CFR 300.122(a)(3)(iii), state that "Graduation from high school with a regular diploma constitutes a change in placement, requiring written prior notice in accordance with 300.503."

5. Is graduation with a special diploma a change in FAPE?

Yes. If a student graduates with a special diploma before the age of 22 and the student and parents have decided that the student will not continue to receive special education or related services, the parents and student must be provided with written notice of a change in FAPE. Even if the student continues in school, a notice of change of placement or FAPE may be required if the services that will be delivered to the student will change significantly.

6. Must an IEP meeting be convened to address the change in FAPE due to graduation?

No. However, the parents and student must be provided written notice prior to graduation. If it is likely that the student will graduate, this notice should be provided at the IEP meeting conducted closest to the time of the anticipated graduation date. Please note that graduation should be discussed frequently during the student's IEP meeting from grades 9–12.

Change in Related Services

Federal regulations indicate that if the IEP team determines that related services are needed, they must be provided whether or not commonly linked to the disability category. The only exception to this general rule is the provision of orientation and mobility training, which is a related service specifically for students with visual impairments.

7. If a student is currently receiving ESE services, what is the procedure for adding a related service?

Before adding a related service that has specific eligibility requirements as defined in State Board of Education rules, such as occupational therapy or physical therapy, the reevaluation process must be followed and it must be determined by the IEP team that the student meets the eligibility criteria. The IEP team must

determine that the related service is required to assist the student to benefit from special education. The parent participation notice for the IEP meeting must indicate the reason for the meeting; such as to discuss a change in FAPE (services). The district does not need to obtain new parental consent for placement. The student's IEP must be revised as appropriate, and a written notice of a change of FAPE provided to the parent.

Before adding a related service, such as a behavioral service, orientation and mobility, or counseling, the IEP team must meet to review current, documented information regarding the student's progress and need for the related service. The parent participation notice for the IEP meeting must indicate the reason for the meeting. The reevaluation process is not required unless additional data (e.g., formal testing) are necessary to make the determination. The student's IEP must be revised, as appropriate, and a written notice of a change in FAPE provided to the parent.

8. If a student is currently receiving ESE services, what is the procedure for <u>discontinuing</u> a related service?

This decision must be made during an IEP meeting and based on current, documented information regarding the student's progress and need for the related service. Common criteria for discontinuation of a related service include successful achievement in the general curriculum without support of the related service, and progression to a level commensurate with the student's ability. At the conclusion of the IEP meeting, the parent must be provided prior written notice of a proposed change in services before services cease, and the IEP team must revise the student's IEP, as appropriate.

DISMISSAL

The reevaluation process, as described in TAP No. FY 2000-2 "Reevaluation Procedures for Students with Disabilities," must be followed by a school district before determining that the student no longer has a disability and is no longer in need of special education services (dismissal from special education).

As part of the reevaluation process, the IEP team, which includes the parent, reviews existing data on the student, including, but not limited to, evaluations and information provided by the student's parents, current classroom-based assessments, and observations by teachers and related services providers. The IEP team may conduct this review without a meeting. However, if no meeting is held, there must be written documentation to verify that all IEP team members participated in the review. Based on this review, the IEP team makes a decision regarding the need for additional data as described below.

If the IEP teams determine that additional data ***are*** *needed*, informed parental consent must be obtained before administering the appropriate tests and other evaluation instruments. Upon completion of the testing, an IEP meeting is conducted to discuss these results and determine if the student continues to have a disability and be in need of special education services. Following the conclusion of the IEP meeting, prior written notice of the team's decision to dismiss must be provided to the parents <u>before</u> services cease. It is recommended that the school district allow ten days before services cease, unless the parents and the school have agreed to an earlier date.

If the IEP team determines that additional data are ***not*** *needed*, the district must notify the parent of this determination and specify the reasons for this determination. The district must also notify the parents of their right to request an assessment to determine whether, for purpose of services under IDEA, the child continues to be a child with a disability. Following the conclusion of the IEP meeting, prior written notice of the decision to dismiss must be provided to the parents <u>before</u> services cease.

QUESTIONS AND ANSWERS

General

9. What is required before determining that a student is no longer a student with a disability in need of special education services (dismissal)?

Prior to making the determination that a student is no longer a student with a disability in need of special education services (dismissal), the reevaluation process, which includes information provided by the parents, must be followed as described on page one. The IEP team should consider appropriate timelines when discussing dismissal, such as semester breaks, transition, etc. The district must provide parental notice of the IEP meeting, which clearly identifies the purpose of the meeting as the review of reevaluation data and consideration of dismissal. Upon reviewing all the data, the IEP team, which includes the parent, determines whether or not the student should be dismissed from special education. The district must then provide prior written notice of the decision to dismiss to the parent before special education services cease.

10. Must at least one formal evaluation be administered prior to dismissing a student from special education?

No. Unless the IEP team had determined that additional data is necessary. However, current State Board of Education rules for Visually Impaired (VI), Deaf/Hard-of-Hearing (D/HH), and Dual Sensory Impaired (DSI) programs have specified reevaluation requirements. Refer to TAP No. FY 2000-2, "Reevaluation Procedures for Students with Disabilities," for additional information on the reevaluation process.

11. If the IEP team determines that no additional testing is needed and the parent disagrees, must testing be administered based on the parent's request?

Yes. This is not subject to refusal, as Section 34 CFR 300.533(d)(2) indicates that the testing must be administered if requested by the parent.

12. How are dismissal criteria determined?

Dismissal criteria are defined in each school district's Special Programs and Procedures for Exceptional Students (SP&P) document. The decision of the IEP team, which includes the parent, to dismiss a student occurs only after the reevaluation process and must be based on data from numerous sources. Common criteria for dismissal include successful achievement in the general curriculum without support or the disability no longer interferes with the student's ability to participate in the general educational program. For a student identified as mentally handicapped, it is recommended that if the student does not meet the initial eligibility criteria, he/she should be dismissed from special education. This recommendation is consistent with Office of Civil Rights (OCR) findings.

Reasons for Dismissal

13. If a student meets the dismissal criteria for special education, but continues to need a related service, such as occupational therapy or physical therapy, can the student be placed on "monitor status" in order to continue to receive the related service?

No. If a student has been reevaluated and is no longer a student with a disability in need of special education services, the student is no longer eligible to receive related services. The role of related services is to enable the student to benefit from special education in order to receive FAPE (34 CFR 300.24).

14. May a student be dismissed from special education based upon infrequent attendance or poor motivation?

No. Infrequent attendance and poor motivation are not reasons for dismissal. The IEP team may need to consider a change in special education services, delivery models, instructional techniques, learning strategies, accommodations, or interventions for that student. The IEP goals, including benchmarks or short-term objectives, may need to be revised to address these areas of concern.

15. May a student be dismissed from special education based solely upon parent request?

No. It is the school district's responsibility to ensure that the student receives a free appropriate public education (FAPE). If a parent requests that the student be dismissed, the IEP team should meet to discuss this request and determine the need for further evaluation information to determine the student's need for special education services. If the IEP team denies the parent's request to dismiss their child from special education, the district must provide the parent with a written notice of refusal that contains all the required information (Section 34 CFR 300.503). Parents or the school district may request mediation or a due process hearing if they are unable to reach an agreement concerning the student's dismissal. A parent may request that a district pay for an independent educational evaluation if they disagree with an evaluation obtained by the school district.

16. May a student be dismissed from special education if the parent is not in attendance at the IEP meeting?

Yes. However, federal regulations state that prior written notice explaining the decision to dismiss the student must be given to the parent. In this circumstance, the school district must wait a reasonable amount of time before taking action to remove the student from the program. This is to ensure that the written notice is "prior" to the action occurring.

Even if the parent is present at the IEP meeting and concurs with the action, a written notice must be given to the parent informing them of the action before the action to dismiss takes place. If the parent is at the IEP meeting and disagrees with the action to dismiss, the district would also need to provide the parent with notice of refusal and their due process hearing rights. If the parent exercises their due process hearing rights, the "stay put" provision would apply consistent with Section 34 CFR 300.514.

17. May a student be dismissed from special education if a member of the IEP team disagrees with the decision to dismiss?

Yes. Any member of the IEP team may disagree with the recommendations. If the parent requests that the student continues to receive special education services and the other team members disagree with the request, the district must provide the parent with prior written notice of the dismissal. This notice must reference the refusal to comply with the parents' request and contain all the required components.

Readmission

18. If a student who is dismissed from special education services begins to have difficulty in the general curriculum and is subsequently referred for the same special education program that the student was eligible for previously, must the student once again meet the initial eligibility criteria of that program?

No, except for students previously identified as mentally handicapped. A student can be re-admitted to a special education program if it is demonstrated through the evaluation process that the student no longer meets dismissal criteria for that particular program, as articulated in the district's SP&P document. However, it is recommended that a student being considered for readmission to the mentally handicapped programs meet initial eligibility criteria. This recommendation is consistent with Office of Civil Rights (OCR) findings.

19. Are the prereferral activities and additional testing required prior to readmission?

No. However, the process for determining eligibility and placement must be followed. This includes documentation of the review of existing data and consent for evaluation if additional testing will be conducted. If during this process the IEP team determines that there is sufficient current data to make a determination regarding eligibility and placement, no new testing would need to be done. The parent must be notified of the eligibility staffing and IEP meeting. The parent must sign a new consent for placement form.

20. If a student is dismissed from special education and no longer in need of services under IDEA, can accommodations continue to be provided for the student?

Yes. General education teachers can and are encouraged to make accommodations for classroom assignments and tests for students. Districts also offer a variety of programs, such as dropout prevention and Title I, to meet the special needs of students. However, in order to receive accommodations on state or district tests, an accommodation plan under Section 504 of the Rehabilitation Act of 1973 must exist.